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June 3, 1996

VIA MESSENGER

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Federal Communications Commission
Office of Secretary

Hon. Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: *CC Docket No. 92-297*

Dear Mr. Hundt:

Since its formation in early 1996—after the close of the comment period in the captioned docket—WebCel Communications, Inc. ("WebCel") has urged that the Commission develop auction eligibility and "buy-out" regulations for Local Multipoint Distribution Service ("LMDS") in order to assure that this revolutionary new wireless service has a fair opportunity to develop as a source of full broadband local telecommunications and cable competition. (*See, e.g.,* WebCel's April 16, 1996 letter to you proposing a transitional, three-pronged cross-ownership plan.)

Under WebCel's approach, local exchange carriers ("LECs") and cable Multiple System Operators ("MSOs") would be precluded from bidding, buying or investing in LMDS licensees in any of their local service areas until effective, facilities-based competition develops. The purpose of this letter is to emphasize that *WebCel's concern with maximizing competition for LMDS service has been supported by several recent and important developments at the state, federal and international government levels.*

First, on May 10, 1996, the attorneys general of Pennsylvania, Minnesota and Wisconsin filed an *ex parte* letter in CC Docket No. 92-297 in which they concurred that:

> it is critical that the Commission develop rules that will preclude the local telephone and cable monopolists from bidding for new LMDS franchises in their regions until there is real competition in their respective local service markets. . . . Without the[se] safeguards, however, it is equally clear that an excellent available alternative for offering a facilities-based direct competitor to the existing local

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> telephone and cable monopolists in the immediate future will, in all likelihood, be lost.

Letter from Thomas W. Corbett, Jr., James E Doyle and Hubert H. Humphrey III to Reed E. Hundt, May 10, 1986, at 2-3. These state officials agree with WebCel that the Commission has a unique and time-limited opportunity to fashion bidding and license eligibility rules that prevent incumbent LECs and MSOs from using their monopoly profits to "lock up" LMDS and snuff out a new form of facilities-based local competition.

Second, on May 23, 1996 Congress passed a Concurrent Resolution on the Budget. Section 341 of the Resolution includes a "Sense of the Senate" section which provides that the Commission should "act expeditiously" to conduct LMDS auctions "in a manner that maximizes revenues, increase efficiency, *and enhances competition*" for the service. H. Conf. Res. 178, § 341(5)(emphasis supplied). Thus, the United States Senate desires that the FCC focus as much on competitive issues of the type raised by WebCel as on the more traditional auction concerns of bidding efficiency and revenue maximization.

The Commission accordingly has before it a clear record and policy basis on which to impose bidding restrictions on LEC and MSO participation in the LMDS auctions. Such an approach would be consistent with the policies underlying the existing cable-MMDS cross-ownership restriction (47 U.S.C. § 533(a)(2)), as modified by Section 202(i) of the Telecommunications Act of 1996, under which cable operators are precluded from holding MMDS licenses within their franchise areas until the cable system "is subject to effective competition."

It would also be consistent with the more far-reaching policy adopted in Canada, which precludes all Canadian local exchange carriers and cable systems from providing LMDS service *anywhere in Canada* in order to foster "an alternative and competitive third force in the local distribution marketplace." *Local Multipoint Communications Systems (LMCS) in the 28Ghz Range: Policy, Authorization Procedures and Evaluation Criteria,* Section 5.4 at 8. Indeed, the Canadian restriction is based on the same public policy rationale underlying WebCel's proposals in this FCC proceeding, where WebCel has argued that the loss of local facilities-based competition outweighs any speculative economies (not established in this record) that existing telephone and cable providers might realize from expansion into LMDS.

> The existing local network operators with their resources and infrastructure in place could realize economies of scale, and move quickly to integrate their wireline facilities with new wireless facilities. This would not, however, foster the development of a third service delivery force to provide consumers more choice of facility providers, more competition and more service innovation.

Id. at 8.

The Commission has been delegated a broad degree of discretion in implementing the local competition provisions and procompetitive policies of the Telecommunications Act of 1996. This lattitude is more than ample to support measures designed to advance application of new wireless technologies as direct, facilities-based competition for local telephone and cable television services. For all these reasons, WebCel urges that the Commission adopt rules in this docket that preclude LECs and cable system MSOs from bidding, buying or investing in LMDS licensees in any of their local service areas until effective, facilities-based local competition develops.

Pursuant to Section 1.1206 of the Commission's Rules, two copies this letter have been delivered to the Commission's Secretary for filing in this proceeding. Please contact the undersigned counsel or David J. Mallof, President of WebCel (202-466-7600), should you have any questions in regard to this matter.

Sincerely,

Glenn B. Manishin

GBM:hs

cc: Hon. James H. Quello
Hon. Rachelle B. Chong
Hon. Susan Ness
Michelle Farquhar, Chief, Wireless Telecommunications Bureau
William E. Kennard, General Counsel
James Olson, Chief, Competition Division, OGC
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